

**Zoning Public Hearing
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION**



**AGENDA ITEM NO.: Z-12
AGENDA DATE: Thu 10/21/2004
PAGE: 1 of 1**

SUBJECT: C14-99-0129 (RCT) - South Park Meadows - Conduct a public hearing and approve a Restrictive Covenant Termination for the property locally known as 9600 South IH-35 Service Road Southbound (Onion Creek / Slaughter Creek Watersheds). Zoning and Platting Commission Recommendation: To grant the Restrictive Covenant Termination. Applicant: Abel J. and Mary Ann Theriot Family, LP (Suzanne Sanders). Applicant: Cunningham-Allen, Inc. (Jana Rice). City Staff: Wendy Walsh, 974-7719.

REQUESTING Neighborhood Planning
DEPARTMENT: and Zoning

DIRECTOR'S
AUTHORIZATION: Alice Glasco

RESTRICTIVE COVENANT TERMINATION REVIEW SHEET

CASE: C14-99-0129 (RCT)

Z.P.C. DATE: September 21, 2004

ADDRESS: 9600 South IH-35 Service Road Southbound

OWNER AND APPLICANT: Abel J. and Mary Ann
Theriot Family, LP
(Suzanne Sanders)

AGENT: Cunningham-Allen, Inc.
(Jana Rice)

EXISTING ZONING: CS-1-CO

AREA: 20 acres

SUMMARY STAFF RECOMMENDATION:

Staff recommends a Termination of the Restrictive Covenant.

PLANNING COMMISSION RECOMMENDATION:

September 21, 2004: *APPROVED STAFF'S RECOMMENDATION; BY CONSENT.*
[J.M; M.W 2ND] (7-0) K.J – OFF DAIS; J.G – ABSENT

ISSUES:

None at this time.

DEPARTMENT COMMENTS:

The Restrictive Covenant covers a "footprint" area within a 1999 rezoning application that was approved for commercial – liquor sales – conditional overlay (CS-1-CO) combining district zoning and was also known as Southpark Meadows. The remainder of Southpark Meadows surrounds the footprint and carries limited office – conditional overlay (LO-CO) combining district zoning. Southpark Meadows is undeveloped and formerly used as an outdoor concert facility. Access to the property is taken to the southbound IH-35 frontage road and Turk Lane. Please refer to Exhibits A (Zoning Map) and A-1 (Aerial View).

The Restrictive Covenant, provided as Exhibit B, states that, "If use of the Property as a cocktail lounge is discontinued for 90 consecutive days, the Owner of the Property will not object to the City of Austin rezoning the Property to Limited Office (LO) district as defined in Chapter 25-2 of the City Code. Normal, seasonal cessation of a use or temporary discontinuance for purpose of maintaining or rebuilding of the Property after damage or destruction may not be included in calculating the period of discontinuance." The cocktail lounge use has been discontinued and the applicant proposes to terminate the Restrictive Covenant and is concurrently requesting to rezone the eastern portion of Southpark Meadows to the community commercial (GR) district to accommodate the development of retail space with a discount club, shopping center, a high turnover restaurant, and two fast food restaurants with drive-through services.

Staff is supportive of the Termination request, as the cocktail lounge use has been discontinued for more than 90 days and the Restrictive Covenant area is proposed to be combined with the surrounding property and rezoned to GR.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
<i>Site</i>	CS-1-CO	Undeveloped and formerly used as an outdoor concert facility
<i>North</i>	LO-CO; RR; GR-CO	Undeveloped and formerly used as an outdoor concert facility; Agricultural; Discount superstore and retail center under construction
<i>South</i>	LO-CO; I-RR; CS-CO	Undeveloped and formerly used as an outdoor concert facility; Undeveloped; Automotive sales (vacant)
<i>East</i>	LO-CO; Across IH-35: I-RR; County; LI-CO; SF-2; CS-CO	Undeveloped and formerly used as an outdoor concert facility; Undeveloped; Equipment repair; Adult-oriented businesses; Convenience storage with truck rental
<i>West</i>	LO-CO	Undeveloped

AREA STUDY: N / A**TIA:** Is required – please refer to Attachment A**WATERSHED:** Onion / Slaughter Creeks**DESIRED DEVELOPMENT ZONE:** Yes**CAPITOL VIEW CORRIDOR:** No**SCENIC ROADWAY:** No**NEIGHBORHOOD ORGANIZATIONS:**

26 – Far South Austin Community Association 300 – Terrell Lane Interceptor Association
 428 – Barton Springs / Edwards Aquifer Conservation District
 948 – South by Southeast Neighborhood Organization
 954 – East Slaughter Lane Neighborhood Association

SCHOOLS:

Williams Elementary School

Paredes Middle School

Akins High School

CASE HISTORIES:

NUMBER	REQUEST	COMMISSION	CITY COUNCIL
C14-04-0126 (Harrell Tract #4)	I-RR to CS	Pending completion of the TIA	Pending
C14-04-0125 (Harrell Tract #3)	I-RR to MF-2	Pending completion of the TIA	Pending
C14-04-0124 (Harrell Tract #1)	I-RR to GR	Pending completion of the TIA	Pending
C14-04-0094 (Janssen Tract)	CS-CO to CS-CO to modify the Conditional Overlay	To Grant CS-CO to modify the Conditional Overlay, with conditions of the TIA	Scheduled for 10-21-04
C14-04-0059 (Harrell / Gatton)	I-RR to CS	Will be scheduled for ZAP October 5, 2004 so that case does not expire: Pending submittal of the TIA	Pending

C14-04-0037 (Slaughter @ Cullen Commercial)	RR to GR	To Grant GR-CO with a list of prohibited uses and conditions of the TIA (7-20-04)	Approved GR-CO with CO for a list of prohibited and conditional uses; the Restrictive Covenant is for the TIA (8-26-04).
C14-03-0186 (Tobin Tract)	SF-2 to GR-CO	To Grant GR-CO	Approved GR-CO with CO for list of prohibited uses, and exterior lighting requirements; fiscal surety (3-4-04)
C14-03-0066 (IH-35 and Slaughter Lane)	RR; SF-2; LI-CO; CS-CO and CS to GR	To Grant GR-CO with conditions of the TIA	Approved GR-CO with CO provide a 6' fence and landscaping along Cullen Lane; 2) direct all traffic south on Cullen Lane by way of limited function driveways onto Cullen Lane that allow right-in and left-out movements only; 3) the use of shielded / hooded lights throughout the site; and, 4) a list of prohibited uses and one accessory use. The Restrictive Covenant is for the TIA memorandum and an Integrated Pest Management (IPM) Plan and a landscape plan for the use of native and adapted plant materials. (10-30-03)
C14-98-0230	I-RR to IP	Applicant requested indefinite postponement and case subsequently expired.	N/A

RELATED CASES:

The Restrictive Covenant area represents a portion of a 1999 case that Council approved for CS-1-CO zoning on November 18, 1999. The Conditional Overlay limits development of the property to 2,000 trips and requires a Traffic Impact Analysis if a use other than a cocktail lounge is developed within the CS-1-CO area; one berm sign, a maximum floor-to-area ratio of 0.0095 to 1; and provides a list of prohibited uses.

Rezoning applications for the eastern portion of properties known as Southwest Meadows and Janssen Tract properties are also in process for GR-CO and CS-CO zoning, respectively (C14-04-0075 and C14-04-0094).

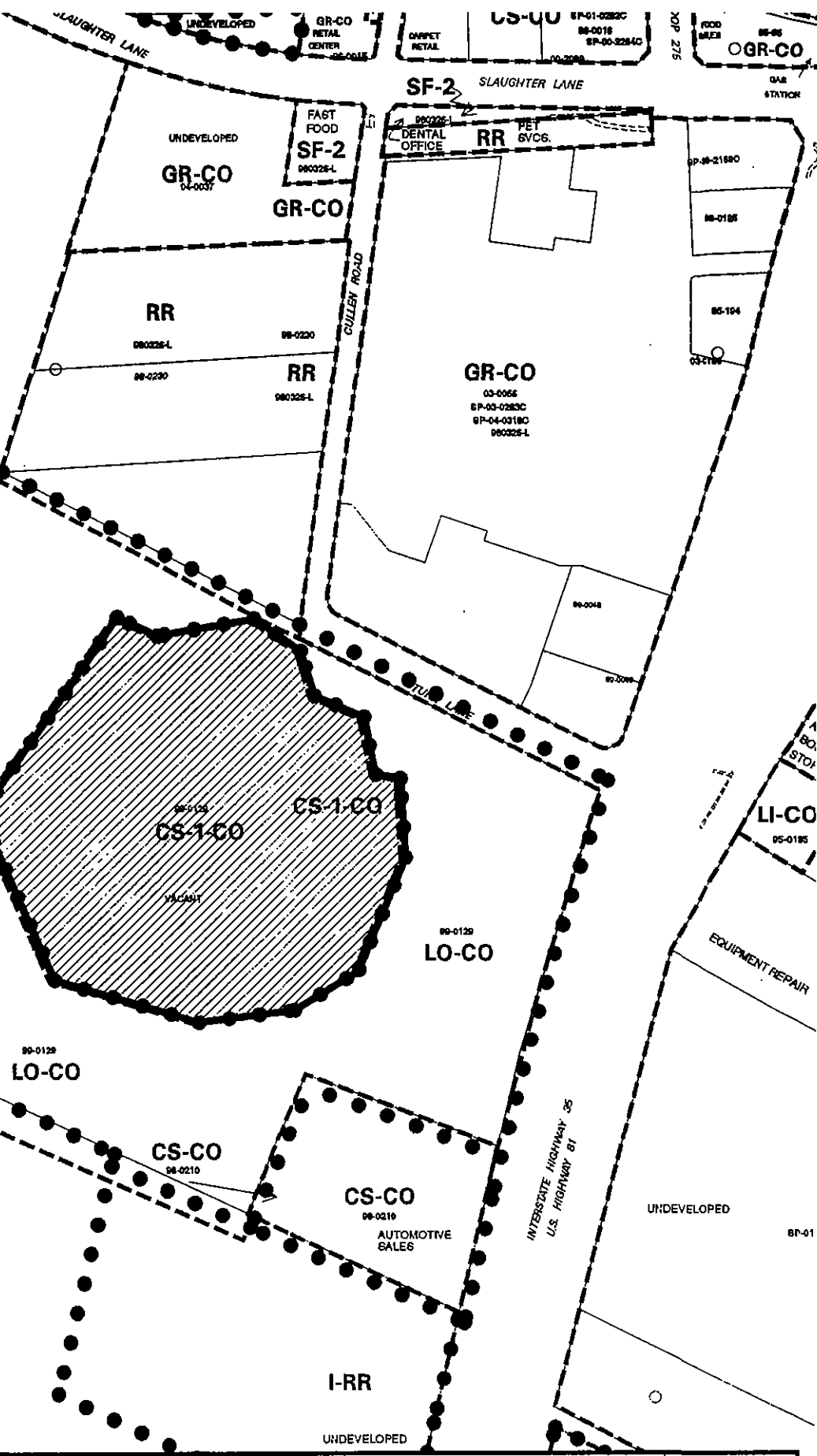
There are no related subdivision or site plan cases on the subject property.

CITY COUNCIL DATE: October 21, 2004 **ACTION:**

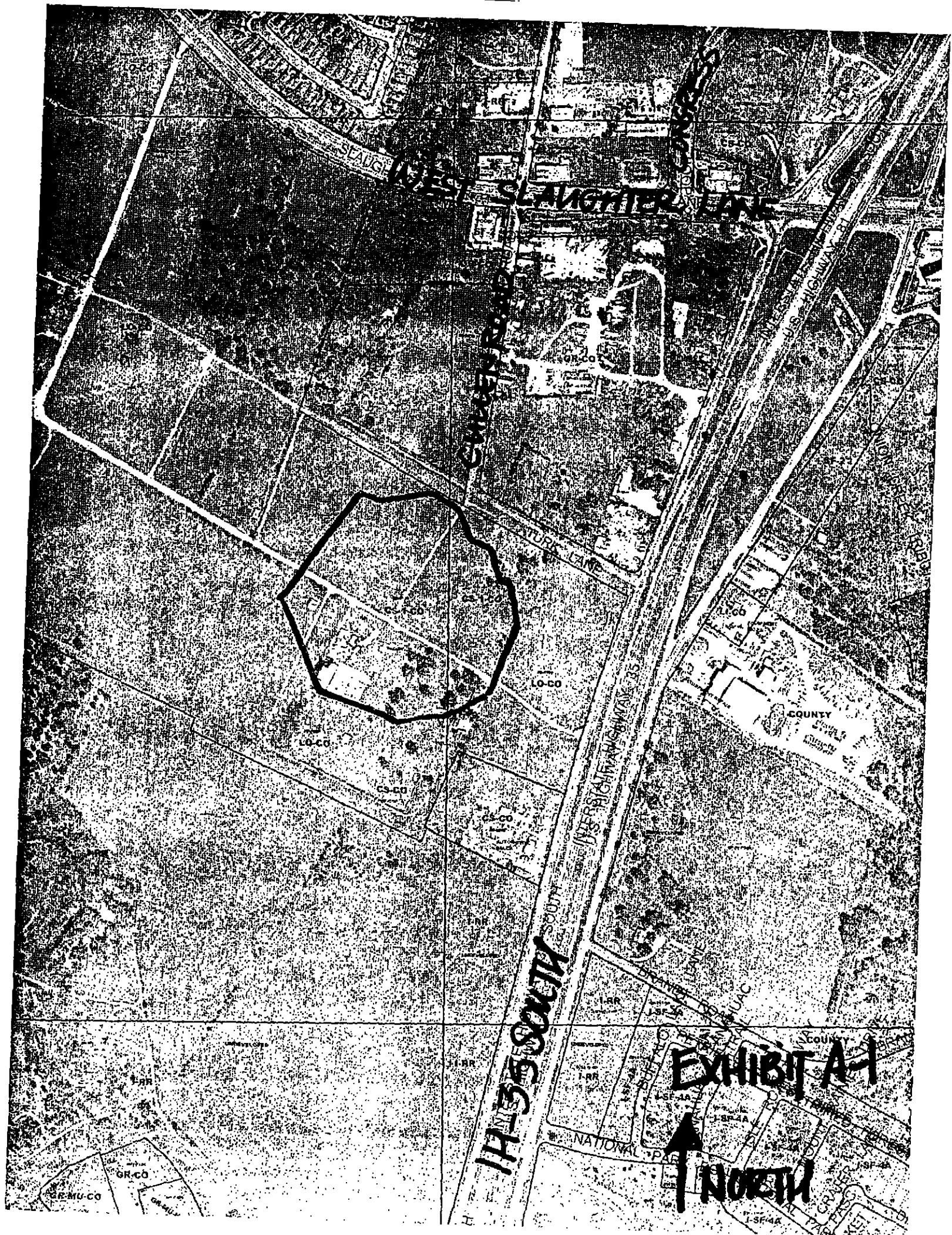
ORDINANCE NUMBER:

CASE MANAGER: Wendy Walsh **PHONE:** 974-7719 e-mail: wendy.walsh@ci.austin.tx.us

OUTDOOR EVENT
VENUE



 1" = 400'	SUBJECT TRACT	RESTRICTIVE COVENANT TERMINATION		CITY GRID REFERENCE NUMBER F13
	PENDING CASE	CASE #: C14-99-0129(RCT)		
	ZONING BOUNDARY	ADDRESS: 9600 S I 35 SVC RD SB		
	CASE MGR: W. WALSH	SUBJECT AREA (acres): 20		
		DATE: 04-09		
		INTLS: SM		





Zoning Case No. C14-99-0129

RESTRICTIVE COVENANT

OWNER: ABEL J. AND MARY ANN THERIOT FAMILY LIMITED PARTNERSHIP, a Texas limited partnership

ADDRESS: 301 Nixon Drive, Austin, Texas 78746

CONSIDERATION: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which is acknowledged.

PROPERTY: A 20.0 acre tract of land out of the Stephen F. Slaughter League Survey No. 1, Abstract No. 20, in Travis County, Texas, said tract of land being more particularly described by metes and bounds in Exhibit "A" attached and incorporated into this covenant.

WHEREAS, the Owner of the Property and the City of Austin have agreed that the Property should be impressed with certain covenants and restrictions;

NOW, THEREFORE, it is declared that the Owner of the Property, for the consideration, shall hold, sell and convey the Property, subject to the following covenants and restrictions impressed upon the Property by this restrictive covenant. These covenants and restrictions shall run with the land, and shall be binding on the Owner of the Property, its heirs, successors, and assigns.

1. If use of the Property as a cocktail lounge is discontinued for 90 consecutive days, the Owner of the Property will not object to the City of Austin rezoning the Property to Limited Office (LO) district as defined in Chapter 25-2 of the City Code. Normal, seasonal cessation of a use, or temporary discontinuance for purpose of maintenance or rebuilding of the Property after damage or destruction may not be included in calculating the period of discontinuance.
2. If any person or entity shall violate or attempt to violate this agreement and covenant, it shall be lawful for the City of Austin to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such agreement or covenant, to prevent the person or entity from such actions, and to collect damages for such actions.
3. If any part of this agreement or covenant is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full effect.
4. If at any time the City of Austin fails to enforce this agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.
5. This agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, and (b) by the owner(s) of the Property subject to the modification, amendment or termination at the time of such modification, amendment or termination.

When the context requires, singular nouns and pronouns include the plural.

EXECUTED this the 18th day of November, 1999.

OWNER:

ABEL J. AND MARY ANN THERIOT
FAMILY LIMITED PARTNERSHIP,
A Texas limited partnership

By: A.J. and M.A. Theriot, LLC,
A Texas limited liability company,
General Partner

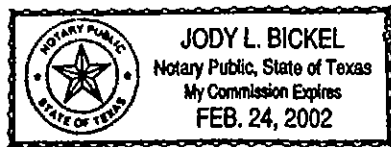
By: Suzanne Sanders
Suzanne M. Sanders, Secretary
Sanders

APPROVED AS TO FORM:

Debra Thomas
Assistant City Attorney
City of Austin

**THE STATE OF TEXAS §
COUNTY OF TRAVIS §**

This instrument was acknowledged before me on this the 18th day of November, 1999, by Suzanne M. Sanders, Secretary of the A.J. and M.A. Theriot, LLC, a Texas limited liability company, on behalf of the company, and the company acknowledged this instrument as General Partner on behalf of Abel J. and Mary Ann Theriot Family Limited Partnership, a Texas limited partnership.



Jody L. Bickel
Notary Public, State of Texas

After Recording, Please Return to:
City of Austin
Department of Law
P. O. Box 1546
Austin, Texas 78767-1546
Attention: Diana Minter, Legal Assistant

CS-1

DESCRIPTION

FOR A 20.000 ACRE TRACT OF LAND SITUATED IN THE STEPHEN F. SLAUGHTER LEAGUE SURVEY NO. 1, ABSTRACT NO. 20, IN TRAVIS COUNTY, TEXAS, BEING A PORTION OF A 136.21 ACRE REMNANT TRACT, DESIGNATED "TRACT ONE", AND CONVEYED TO ABEL J. AND MARY ANN THERIOT FAMILY LIMITED PARTNERSHIP BY INSTRUMENT RECORDED IN VOLUME 12583, PAGE 1445 OF THE REAL PROPERTY RECORDS OF SAID COUNTY, SAID 20.000 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING FOR REFERENCE on an iron pipe found on the southwest corner of Lot 16, "Tom F. Dunnahoo Subdivision", a subdivision according to the plat thereof recorded in Volume 683, Page 1 of the Deed Records of said County, same being the southeast corner of a 60.96 acre remnant tract of land, designated "Tract Two", and conveyed to Abel J. and Mary Ann Theriot Family Limited Partnership by instrument recorded in Volume 12583, Page 1445 of the Real Property Records of said County, same being an angle point in the northerly boundary line of said "Tract One";

THENCE with the northerly boundary line of said "Tract One", same being the southerly boundary line of said Lot 16, also in part with the southerly right-of-way line of Turk Lane as dedicated by said Subdivision, S 59° 48' 14" E (Bearing Basis/Directional Control Line) for a distance of 897.56 feet pass a point from which an iron pipe found representing the southeasterly corner of said Lot 16 bears S 30° 11' 46" W for a distance of 1.53 feet, continue on said course for a total distance of 1372.35 feet to a point;

THENCE departing the southerly right-of-way line of said Turk Lane, through the interior of said "Tract One", S 25° 13' 12" W for a distance of 425.00 feet to an easterly corner and **POINT OF BEGINNING** hereof;


THENCE continuing through said "Tract One", the following fourteen (14) courses and distances:

- 1) S 25° 13' 12" W for a distance of 325.00 feet to an angle point hereof;
- 2) S 61° 01' 25" W for a distance of 195.71 feet to an angle point hereof;
- 3) S 85° 32' 37" W for a distance of 254.20 feet to an angle point hereof;

EXHIBIT "A"

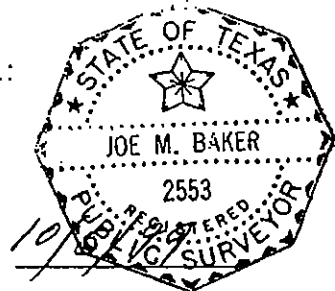
- 4) N 70° 29' 45" W for a distance of 397.19 feet to an angle point hereof;
- 5) N 20° 49' 06" W for a distance of 480.97 feet to an angle point hereof;
- 6) N 37° 15' 24" E for a distance of 631.75 feet to an angle point hereof;
- 7) S 62° 06' 55" E for a distance of 116.34 feet to an angle point hereof;
- 8) N 83° 02' 42" E for a distance of 258.96 feet an angle point hereof;
- 9) S 52° 50' 21" E for a distance of 149.83 feet to an angle point hereof;
- 10) S 14° 30' 00" E for a distance of 124.02 feet to an angle point hereof;
- 11) S 63° 24' 43" E for a distance of 140.69 feet to an angle point hereof;
- 12) S 08° 38' 41" E for a distance of 156.79 feet to an angle point hereof;
- 13) S 77° 34' 47" E for a distance of 64.99 feet to an angle point hereof;
- 14) S 00° 45' 58" E for a distance of 210.85 feet to the **POINT OF BEGINNING** hereof
and containing 20.000 acres of land.

Prepared from survey preformed by Baker-Aicklen & Assoc., Inc.:



Joe M. Baker-Aicklen & Assoc., Inc.
Registered Professional Land Surveyor No. 2553
Baker-Aicklen & Assoc., Inc.
203 E. Main Street, Suite 201
Round Rock, Texas 78664
(512) 244-9620

Date



SKETCH OF 20.000 ACRE TRACT SURVEYED FOR ZONING PURPOSES

SCALE:
1" = 300'

INTERSTATE HIGHWAY NO. 35

ABEL J. AND MARY ANN THERIOT
FAMILY LIMITED PARTNERSHIP
60.96 ACRE REMNANT TRACT
TRACT TWO
VOL. 12583, PG. 1445

TOM F. DUNNAHOD
SUBDIVISION
VOL. 683, PG. 1

LOT 18
* S 89°48'14" E 1787.84'

TURK LANE

CULLEN LANE

B.F.R.

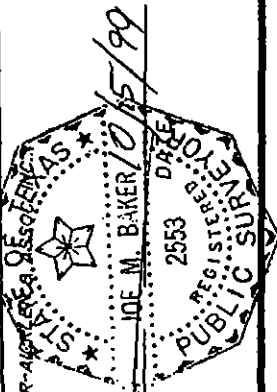
P.O.B.

NUMBER	DIRECTION	DISTANCE
L1	S 6°01'25" W	193.71'
L2	S 62°06'55" E	116.34'
L3	N 83°02'42" E	258.96'
L4	S 62°50'21" E	149.83'
L5	S 14°30'00" E	124.02'
L6	S 63°24'43" E	140.69'
L7	S 08°38'41" E	156.79'
L8	S 77°34'47" E	164.99'
L9	S 00°45'58" E	210.83'

LEGEND

- IRON PIPE FOUND ○ IPF
- IRON ROD FOUND ● IRF
- POINT OF BEGINNING P.O.B.
- BEGINNING FOR REFERENCE B.F.R.
- CALCULATED POINT X CP
- * BEARING BASIS/
DIRECTIONAL CONTROL
LINE
- INSIDE I/S

CURVE TABLE			
NUMBER	DELTA	CHORD BRG.	RADIUS/ARC'
CI	05°03'43"	S 18°22'01" W	11631.71
			1027.61
			1027.28



JOE M. BAKER, R.P.L.S. #2553
1203 E. MAIN, SUITE 201
ROUND ROCK, TX 78664

ABEL J. AND MARY ANN THERIOT
FAMILY LIMITED PARTNERSHIP
136.21 ACRE REMNANT TRACT
TRACT ONE
VOL. 12583, PG. 1445

ELDON WAYNE JANSSEN, ET UX
5.588 ACRES
VOL. 12702 PG. 1549

ALMA TABB HARRELL
200 ACRES, SAVE AND EXCEPT, 92/100 ACRE
VOL. 598 PG. 569

Baker-Aicklen
& Associates, Inc.
Engineers / Surveyors

JOB NO.: 1011-001-20
BY: M. NOLEN

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

Dana Debeauvoir

11-24-1999 08:54 AM 1999144590
BAZANJ \$19.00
DANA DEBEAUVOIR , COUNTY CLERK
TRAVIS COUNTY, TEXAS

RECORDERS MEMORANDUM-At the time of recordation this instrument was found to be inadequate for the best photographic reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.



Cunningham | Allen

May 28, 2004

Ms. Wendy Walsh
Neighborhood Planning and Zoning Department
City of Austin
P.O. Box 1088
Austin, Texas 78767

RE: Request for Termination of Restrictive Covenant
South Park Meadows
9600 IH 35 South
CAI No. 277-1001

Dear Ms. Walsh:

Please allow this letter to serve as a summary for our request to terminate a Restrictive Covenant filed in Document No. 1999144590, of the Real Property Records of Travis County, Texas. The subject tract affected by this covenant is within the full-purpose jurisdiction of the City of Austin, and is currently zoned CS-1-CO (Commercial – Liquor Sales District Designation as delineated in Ordinance No. 991118-79 as “Tract 2”) with a dilapidated concession/ticket stand, concrete pads, stage and other dilapidated wood frame structures on the property. This Restrictive Covenant states that if the “use of the Property as a cocktail lounge is discontinued for 90 consecutive days, the Owner of the Property will not object to the City of Austin rezoning the Property to Limited Office (LO) district as defined in Chapter 25-2 of the City Code. Normal, seasonal cessation of a use, or temporary discontinuance for purpose of maintenance or rebuilding of the Property after damage or destruction may not be included in calculating the period of discontinuance”.

Our clients have submitted a zoning change requesting CS-1 zoning classification to the City of Austin Neighborhood Planning and Zoning Department for review. This zoning classification would allow our clients to construct a commercial retail shopping center with a discount store of 140,000 SF, anchor stores and specialty retail totaling 395,000 SF, high turnover restaurants totaling 20,000 SF, fast food restaurants with drive thru totaling 23,000 SF, and fast food restaurants without drive thru totaling 24,000 SF. If the zoning is granted, there will be no need for the restrictive covenant.

If there are any further questions regarding this request, or if any additional information is required, please do not hesitate to call.

Sincerely,

Jana Havelka Rice
Land Planner/ Processing Specialist

JHR/

e:\2771001\documents\processing\2771001 re termination summary letter for south park.doc

TERMINATION OF RESTRICTIVE COVENANT
FOR
ZONING CASE: C14-99-0129

Owner: Abel J. and Mary Ann Theriot Family Limited Partnership,
a Texas limited partnership

Address: 4917 Congress Avenue, Austin, Texas 78745-2306

City: The City of Austin, a home-rule city, municipal corporation and political
subdivision of the State of Texas, in Travis County, Texas.

City Council: The City Council of the City of Austin.

Consideration: Ten and No/100 Dollars (\$10.00) and other good and valuable
consideration paid by the Owner to the City of Austin, the receipt and
sufficiency of which is acknowledged.

WHEREAS, the Abel J. and Mary Ann Theriot Family Limited partnership, a Texas limited partnership, as owner of all that certain property described in Zoning File No. C14-99-0129, consisting of approximately 20.0 acres of land out of the S.F. Slaughter League (the "Property"), as more particularly described in the restrictive covenant recorded in the Real Property Records of Travis County, Texas, in Document No. 1999144590, (the "Restrictive Covenant"), imposed certain restrictions and covenants on the Original Property by the Restrictive Covenant of record; and,

WHEREAS, the Restrictive Covenant provided that the covenant could be modified, amended, or terminated by joint action of both (a) a majority of the members of the City Council and (b) the Owner of the Property at the time of such modification, amendment or termination; and,

WHEREAS, the Owner, as sole and current owner of the Property now desires to terminate the Restrictive Covenant; and,

WHEREAS, the City Council and the Owner, as the sole and current owner of the Property, agree the Restrictive Covenant should be terminated;

NOW, THEREFORE, for and in consideration of the premises and mutual promises, covenants, and agreements hereinafter set forth, the City of Austin and the Owner, agree as follows:

1. The Restrictive Covenant is terminated by this termination. Each and every one of the terms, conditions, and provisions of the Restrictive Covenant, as set forth in the Restrictive Covenant, shall have no force or effect on and after the effective date of this termination.
2. The City Manager, or his designee, shall execute, on behalf of the City, this Termination of Restrictive Covenant for Zoning File No. C14-99-0129 (the "Termination of Restrictive Covenant") as authorized by the City Council of the City of Austin. This Termination of Restrictive Covenant shall be filed in the Official Public Records of Travis County, Texas, which will terminate the document of record in Document No. 1999144590.

EXECUTED to be effective the _____ day of _____, 2004.

OWNER:

**ABEL J. AND MARY ANN THERIOT FAMILY
LIMITED PARTNERSHIP,
a Texas limited partnership**

By: A.J. and M.A. Theriot, LLC,
a Texas limited liability company,
General Partner

By: _____
Susanne Sanders, Manager

CITY OF AUSTIN:

By: _____
**LAURA J. HUFFMAN,
ASSISTANT CITY MANAGER
CITY OF AUSTIN**

THE STATE OF TEXAS

COUNTY OF TRAVIS

§
§
§

This instrument was acknowledged before me on this the _____ day of _____, 2004, by Susanne Sanders, Manager, on behalf of A.J. and M.A. Theriot LLC, a limited liability company, and the company acknowledged this instrument as General Partner on behalf of Abel J. and Mary Ann Theriot Family Limited Partnership, a Texas limited partnership.

Notary Public, State of Texas

THE STATE OF TEXAS

COUNTY OF TRAVIS

§
§
§
§
§

This instrument was acknowledged before me on this the _____ day of _____, 2004, by **LAURA J. HUFFMAN**, as **ASSISTANT CITY MANAGER** OF THE CITY OF AUSTIN, a municipal corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

After Recording, Please Return to:
City of Austin
Department of Law
P. O. Box 1088
Austin, Texas 78767
Attention: Diana Minter, Legal Assistant